

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

CHRISTIAN HANEY,

Plaintiff,

v.

**CIVIL ACTION NO. 2:19-00200
(Removed from the Circuit Court of
Kanawha County, Case No. 18-C-1470)**

**NATHANIAL BARKLEY, individually and
in his official capacity as a correctional
officer of the West Virginia Division of
Corrections and Rehabilitation, THE WEST
VIRGINIA DIVISION OF CORRECTIONS
AND REHABILITATION, an agency of the
State of West Virginia; and JOHN DOE,
unknown person or persons, individually and
in their official capacity as correctional officers
of the West Virginia Division of Corrections
and Rehabilitation,**

Defendants.

**DEFENDANT NATHANIAL BARKLEY'S
NOTICE OF REMOVAL**

TO: Cathy S. Gatson
Clerk, 13th Judicial Circuit
Kanawha County, West Virginia
P. O. Box 2351
Charleston WV 25328-2351

Timothy J. Manchin, Esquire (WVSB #2304)
Joseph D. Garcia, Esquire (WVSB #11097)
Manchin Injury Law Group
Manchin Professional Building
1543 Fairmont Avenue, Suite 203
Fairmont, WV 26554
Counsel for Plaintiff

M. Andrew Brison, Esquire (WVSB #5787)

Anspach Meeks Ellenberger, LLP
900 Lee Street, East, Suite 1700
Charleston, WV 25301
P. O. Box 11866
Charleston, WV 25339
Counsel for Defendant WVDCR

NOW COMES the Defendant, Nathaniel Barkley, by counsel, Lou Ann S. Cyrus, Emily L. Lilly, and the law firm of Shuman, McCuskey & Slicer, PLLC, pursuant to 28 U.S.C. §1441, and states that it has removed this action from the Circuit Court of Kanawha County, West Virginia, to the United States District for the Southern District of West Virginia upon the following grounds:

1. Plaintiff filed her original Summons and Complaint, Civil Action No. 18-C-1470, in the Circuit Court of Kanawha County, West Virginia, on November 26, 2018, styled *Christian Haney v. Nathaniel Barkley, individually and in his official capacity as a correctional officer of the West Virginia Division of Corrections and Rehabilitation, the West Virginia Division of Corrections and Rehabilitation, an agency of the State of West Virginia; and John Doe, unknown person or persons, individually and in their official capacity as correctional officers of the West Virginia Division of Corrections and Rehabilitation.*

2. Plaintiff served the original Summons and Complaint upon Defendant Nathaniel Barkley on March 9, 2019.

3. Kanawha County is assigned to the United States District Court for the Southern District of West Virginia at Charleston.

4. As required by 28 U.S.C. §1446(a), true and correct copies of all process and pleadings served upon Defendant Barkley are attached hereto and incorporated herein by reference as **Exhibits A and B: Exhibit A**, Summons; **Exhibit B**, Complaint. Additionally, the Docket Sheet from Civil Action 18-C-1465 is attached as **Exhibit C**.

5. Pursuant to 28 U.S.C. §1446(a), this Notice of Removal has been filed and lodged with the Circuit Court of Kanawha County within thirty (30) days after Defendant Barkley was served with the Summons and Complaint.

6. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. §1331, in that the Complaint reveals a federal question, and is, therefore, one which may be removed to this Court by Defendants pursuant to 28 U.S.C. §1441(a).

- a. Plaintiff asserts that while she was an inmate at the Tygart Valley Regional Jail, she was subjected to sexual assault, sexual harassment, sexual abuse, and sexual exploitation by then-correctional officer Nathaniel Barkley.
- b. In her Complaint, she asserts theories of liability against Defendant Barkley, the West Virginia Division of Corrections and Rehabilitation, and John Doe(s), including, but not limited to, violation of Plaintiff's Eighth Amendment rights of the Constitution of the United States of America pursuant to 42 U.S.C. § 1983 (*Complaint*, ¶¶ 1, 37-39); and claims for violation of the Eighth Amendment under the West Virginia Constitution; (*Id.*).

7. Notice of Removal is filed timely.

8. Defendant West Virginia Division of Corrections and Rehabilitation, by counsel, M. Andrew Brison, and the law firm of Anspach Meeks Ellenberger LLP, has consented to removal of this civil matter to the United States District for the Southern District of West Virginia. A copy of the Consent for Removal to the United States District for the Southern District of West Virginia is attached hereto as **Exhibit D**.

9. The Kanawha County Circuit Court docket sheet does not reflect a return of service for putative defendant(s) John Doe. *See Exhibit C*.

10. Pursuant to 28 U.S.C. § 1446(b), notice of this removal is being filed with the Circuit Clerk of Kanawha County, West Virginia, and upon all counsel of record. *See Exhibit E.*

11. The filing of this Notice, along with the filing of a copy of the Notice in the Circuit Court of Kanawha County and service of this Notice upon all counsel of record in this case, immediately confers exclusive jurisdiction of this case to the United States District Court for the Southern District of West Virginia and divests the Circuit Court of Kanawha County of all jurisdiction over these proceedings and the claims and/or causes of action raised herein. *See Maseda v. Honda Motors Co.*, 861 F.2d 1248, 1254-55 (11th Cir. 1988) (stating that “after removal, the jurisdiction of the state court absolutely ceases and the state court has a duty not to proceed any further in the case”). “Any subsequent proceedings in state court are void *ab initio*.” *Id.*

34. Defendant Barkley reserves the right to amend or supplement this Notice of Removal.

35. No admission of fact, law, or liability is intended by this Notice of Removal, and all defenses, affirmative defenses, and motions are hereby reserved by Defendant Barkley.

36. If any question arises as to the propriety of the removal of this action, Defendant Barkley requests an opportunity to present a brief or additional evidence in support of its position that this case is removable. *See Sierminski v. Transouth Fin. Corp.*, 216 F.3d 945, 949 (11th Cir. 2000) (announcing general rule that post-removal evidence in assessing removal jurisdiction may be considered by the Court).

WHEREFORE, Defendant Barkley has removed this action from the Circuit Court of Kanawha County, West Virginia to the United States District Court for the Southern District of

West Virginia. No further proceedings in this action can be had in the Circuit Court of Kanawha County unless and until the case is remanded pursuant to 28 U.S.C. §1446(d).

NATHANIAL BARKLEY
By Counsel

/s/ Lou Ann S. Cyrus
Lou Ann S. Cyrus (WVSB #6558)
Emily L. Lilly (WVSB #11045)
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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CHRISTIAN HANEY,

Plaintiff,

v.

CIVIL ACTION NO. 18-C-1470
Hon. Jennifer F. Bailey, Judge

NATHANIAL BARKLEY, individually and in his official capacity as a correctional officer of the West Virginia Division of Corrections and Rehabilitation, THE WEST VIRGINIA DIVISION OF CORRECTIONS AND REHABILITATION, an agency of the State of West Virginia; and JOHN DOE, unknown person or persons, individually and in their official capacity as correctional officers of the West Virginia Division of Corrections and Rehabilitation,

Defendants.

CERTIFICATE OF SERVICE

Lou Ann S. Cyrus/Emily L. Lilly, counsel for Defendant, Nathaniel Barkley, do hereby certify that on the 20th day of March, 2019, I have served a true and exact copy of the foregoing *Defendant Nathaniel Barkley's Notice of Filing of Removal* via the United States Postal Service, by placing the same in a stamped envelope, addressed as follows:

Timothy J. Manchin, Esquire (WVSB #2304)
Joseph D. Garcia, Esquire (WVSB #11097)
Manchin Injury Law Group
Manchin Professional Building
1543 Fairmont Avenue, Suite 203
Fairmont, WV 26554
Counsel for Plaintiff

M. Andrew Brison, Esquire (WVSB #5787)
Anspach Meeks Ellenberger, LLP
900 Lee Street, East, Suite 1700
Charleston, WV 25301
Counsel for WVDCR

/s/ Lou Ann S. Cyrus

Lou Ann S. Cyrus (WVSB #6558)

Emily L. Lilly (WVSB #11045)